IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.1647 OF 2006

Maharashtra Vinanudanit Adhayapak Mahavidyalaya Sansthachalak Association, a society registered under the Societies Registration Act, 1860 and a Public Trust, registered under the Bombay Public Trust Act, 1950 having its registered office at 15, Shardul Appartment, Old Toll Naka, Mumbai by-pass road, Vadgaon Budruk, Pune-4110 041. ...PETITIONER.

Versus

1. The State of Maharashtra, through its Director of Higher Education, Pune.

2. The Pravesh Niyantran Samiti, having its office at 305, 3rd floor, Government Polytechnic building, 49, Kherwadi, Ali-Yavar Jung Marg, Bandra (E), Mumbai-400 051. ..RESPONDENTS.

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Mr.Shekhar Naphade, Sr.Counsel with Mr.Girish Kulkarni and Mr.Anilkumar Joshi, Advocates for the Petitioner.
Mr.A.A.Kumbhakoni, Ass.Adv.General with Mr.M.D.Naik, A.G.P. for Respondent No.1.
Ms.Anjali Helekar, Advocate for Applicant in Chamber Summons No.214 of 2006.

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CORAM : **F.I.REBELLO AND SMT.V.K.TAHILRAMANI,JJ.**

DATED : **AUGUST 01, 2006.**

ORAL JUDGMENT (PER F.I.REBELLO, J.) :

1. Rule. Heard forthwith.

2. The petitioner is an Association of private un-aided B.Ed colleges in the State of Maharashtra and is registered as a Society under the Societies Registration Act, 1860 and a Public Trust under the Bombay Public Trust Act, 1950. The petitioner has about 173 members who run their colleges all over the State of Maharashtra belonging to both minority as also non-minority institutions. The second Respondent is a committee constituted in terms of the judgment of the Apex Court in **Islamic Academy Vs. State of Karnataka**, reported in **(2003) 6 SCC 697** and thereafter explained in the case of **P.A.Inamdar Vs. State of Maharashtra**, reported in **(2005) 6 S.C.C.537**. The Respondent No.2 is empowered to monitor the conduct of examinations as also regulate the admissions to

professional courses including B.Ed. conducted by the educational institutions in the State of Maharashtra where students appeared for the Common Entrance Test (CET) conducted by the petitioner.

3. By the present Petition the petitioners are challenging, according to them, the arbitrary and illegal decision dated 13th July, 2006 of the second Respondent received by the petitioner by fax on 15th July, 2006, thereby cancelling the oral interview and calling on the petitioner Association to admit students to B.Ed. Course for th academic year 2006-2007 without taking the oral marks into consideration. The petitioner submits that this decision is clearly arbitrary, in as much as the impugned decision has been taken on totally unsustainable and false complaints, which will be clear from the reading of the impugned order. The copies of the complaints were also not brought to the attention of the petitioner and no notice whatsoever was issued to the petitioner before making the order, which according to the petitioner takes away the fundamental rights of

the private unaided colleges as laid down by the Supreme Court. As there was a failure to give an opportunity before passing the order, it would be a breach of the principles of natural justice and fair play. The Respondent No.2 without conducting an enquiry has reached to a conclusion as set out in the impugned decision. As a consequence, the entire exercise conducted by the petitioner to conduct CET as per the directions of the second Respondent itself through various centres in Maharashtra, has now become redundant. There are about 17000 candidates who appeared for the CET dated 2nd July, 2006 and they are awaiting declarations of the result on 20th July, 2006. It is in these circumstances that the petitioners have approached this Court to challenge the said decision.

. The petitioners contend that the complaints were a systematical attempt by the disgruntled student organizations to scuttle the rights conferred on the private educational institutions by the judgments of the Supreme Court in Islamic

Academy (supra) and P.A.Inamdar (supra). The judgments, it is pointed out, have conferred complete autonomy on the unaided institutions, both minority and non-minority, to make admissions to its institutions through examination of CET conducted by recognised association, like the petitioners. The examinations were conducted on 2nd July, 2006, without a whisper of a complaint from any candidate or any other eligible persons. The oral interviews were also conducted successfully in a most ideal and appropriate manner and no complaint of any nature whatsoever has been received. In such circumstances, Respondent No.2 ought not to have entertained the complaints from political bodies which oppose the CET being conducted by the Association of private unaided colleges as directed by the Supreme Court. The autonomy granted to the private unaided institutions by the Supreme Court to conduct its own admission process has not being received well by the first Respondent in the right spirit. All attempts have been made to make such right redundant. The petitioners for that purposes,

rely on the letters issued to the petitioners at the behest of the first Respondent.

. In terms of the judgment in P.A.Inamdar (supra), the petitioners approached the second Respondent with an application to permit the petitioners to conduct Common Entrance Test (CET) for the B.Ed course for the academic year 2006-2007. The second Respondent by communication dated 3rd March, 2006, addressed to the petitioner, communicated the decision of the second Respondent taken in its meeting dated 16th February, 2006 to permit the petitioner to conduct a CET on 25th June, 2006 for nongrant and minority B.Ed colleges. The petitioner thereafter approached the second Respondent committee with a brochure to permit the petitioner to conduct a Common Entrance Test (CET). The said brochure contained information about the 173 members of the petitioner, the rules as regard the conduct of the CET by the petitioner. The draft brochure as submitted by the petitioner was approved by the second Respondent and communicated to the

petitioner by letter dated 22nd March, 2006. The second Respondent in its communication dated 22nd March, 2006 had informed the petitioner, that the petitioner should implement and observe the single window system with respect to the admissions in each of its colleges. The Centralised Admission Process was to be supervised by the persons authorised or appointed by Respondent No.2 through the Directorate of Higher Education, Pune. Further condition was imposed that admissions so done under CAP would be regularised by the Respondent No.2 after the petitioners submitted the lists of admitted students to Respondent No.2's office. Any admissions done by the individual colleges, not as per CAP/Single Window System, would be invalid and would not be regularised by the Respondent No.2.

4. In terms of the brochure approved by the second Respondent written examinations were conducted on 2nd July, 2006 by the petitioner with examination centres all over the State of Maharashtra. One of the student organisation

before conduct of the written examination had threatened that it would not permit the examination to be conducted smoothly. Demonstrations were held at Aurangabad. However, with the assistance of the Police Guard, the examinations at Aurangabad centre were smoothly conducted. The leader of the organisation had himself appeared for the written examination. The petitioner's case is that being unsuccessful in the attempt to derail the written exam, the student organisation alongwith another organisation had approached the second Respondent. The petitioner, however, is not aware of the nature of the complaint, but, has come to know of complaints made, pursuant to the impugned order. Exhibit 'G' to the Petition is a letter dated 13th July, 2006 which includes the extracts of the Minutes of the meeting of the second Respondent committee. The petitioner were also informed that the petitioners had to comply the decision of the committee and compliance report had to be submitted. From the extracts of Minutes, the following emerges :

. A meeting was called to consider the admission process and oral test by the petitioners for the academic year 2006-2007 and letter dated 22nd June, 2006 submitted by Akhil Bhartiya Vidyarthee Parishad, Maharashtra Pradesh, Mumbai; and letter dated 21st June, 2006 of Chhya-Marathi Yuva Sanghatan, Maharashtra - Aurangabad which is forwarded by the Director, Higher Education, Pune by his letter dated 22nd June, 2006, about admission process and oral test of the Association.

. It is set out that the Respondent No.2 committee considered the letters regarding admission process and oral test being taken by the Association for B.Ed. courses for private and unaided B.Ed. colleges/institutions. In view of the complaints, the Director, Higher Education, Maharashtra State, Pune was designated as Monitoring Authority of the admission process of B.Ed course for the alleged private and unaided

B.Ed colleges/institutions for the academic year 2006-2007. The admission process was to be held at the office of the Directorate of Higher Education, Pune and the Director, Higher Education, Pune would obtain fresh preference forms from the candidates, who were seeking admissions for B.Ed. course for academic year 2006-2007. It was further set out that in view of the complaints received by the Committee, the oral test for admission of B.Ed course for the academic year 2006-2007 stands cancelled and the marks for the theory papers will be considered for merit rank. Consequential directions were also given. We are not concerned with the other aspects, as for the moment that is not the subject matter in the present Petition.

5. The petitioner’s have challenged the action of the second Respondent as set out in Ground Nos.(A) & (B) i.e. the Respondent No.2 had acted on some complaints of student organisations to cancel the results of the oral interview without show cause to the petitioner or an opportunity to

the petitioner to show cause against the complaints received by the Respondent No.2. It is submitted that the action was clearly in breach of the principles of natural justice and fair play. Secondly, the complaints received by the second Respondent dated 21st June, 2006 and 22 June, 2006 were much prior to the conduct of the written examination which were conducted on 2nd July, 2006 and the oral test conducted between 2-5th July, 2006. The complaints, therefore, were not in respect of the conduct of the written examinations or the oral tests and as such the decision of the second Respondent to cancel the results of the oral interviews was acting on the material extraneous to the cancellation of the results and consequently the decision to that extent is illegal, null and void.

6. It is further submitted that decision is completely illegal and in breach of the rights of the petitioner's members, more so, after Respondent No.2 itself had permitted the petitioner to conduct the examinations and had

approved the brochure for conduct of the examinations and selection which provided amongst others for oral interview and marks reserved for the same.

. In view of the above, the petitioners have prayed for writ of certiorari to quash the order/decision dated 12th July, 2006 as communicated vide letter dated 13th July, 2006. It may be pertinent to point out, that in the course of hearing, the petitioners have produced before us the brochure for admission to B.Ed colleges for the Academic Years 2004-2005 & 2005-2006, which were also approved by the second Respondent and which also contains provisions for oral interview and reservation of marks.

7. A reply has been filed on behalf of Respondent No.2 by Pradeep Laxman Darade, Desk Officer. It is pointed out that the decision, taken at the meeting of Respondent No.2 dated 12th July, 2006 and communicated to the petitioner by letter dated 13th July, 2006, was based on the

complaints received from various student organisations. It is set out that the main allegation of the student organisations is that the member colleges of the petitioner association had issued the forms only to the extent of their intake capacity and to those students only who had agreed to their terms, in terms of financial dealings and those who had not agreed were not given the forms, with the result, that meritorious students had to suffer. In terms, it was contended by the organisations that considering the judgment of the Supreme Court only the meritorious students in CET should be given admission. Some of the managements of the member colleges of the petitioner had given the forms to those who are willing to give more donations. The students were compelled to give preference to the same institution from where they have purchased and given the forms. There are also other issues raised in the complaints. It is then set out that though the petitioners had being allowed to conduct the regular CET, the examination process was not carried as per the directions of the

Supreme Court. The institutions, it is alleged, have violated the Supreme Court decision that no Association or Institution who follows the procedure should lead to profiteering and charging of capitation fees. The complaints received from the student organisations were taken note of by the Respondent No.2 committee which were : (1) prospectus and admission forms were not made available to all the students unless financial negotiations are done in advance; (2) some of the institutions sold the prospectus as per the seats available in their institutions; and (3) students were compelled to write preference of the institute from where they purchased the prospectus and admission forms by which the admission process was confirmed to a particular institute before the examination process is over, thereby giving a complete go by to the Single Window System.

. It is on account of these complaints that the decision was taken. The committee, it is set out, decided to cancel only the marks obtained by the students in the oral tests for admission to

B.Ed course for academic year 2006-2007 and that the marks for the theory papers in respect of CET conducted by the petitioners would be considered for merit rank and that the Director of Higher Education, Pune shall follow the single window admission process and obtain the fresh preference forms from the candidates.

8. Rejoinder has been filed on behalf of the petitioner setting out that the decision of the committee is based on only two letters dated 21st June, 2006 & 22nd June, 2006 and which were made available now to the petitioner. The petitioners have denied that the member colleges had issued forms only to the extent of their intake capacity and only to those students who had agreed to the terms of the said members in terms of financial dealings as being false. It is also denied that the students were compelled to give preference of the institution from where they have purchased and given the forms and also stated that the admissions are to be given on merit strictly as per the procedure prescribed by the second

Respondent as contained in the brochure which was approved by the second Respondent. Considering the nature of the allegations and keeping in mind, the principles of fairness, reasonableness and non-arbitrarness, apart from the fact that the impugned action on the part of the second Respondent No.2 is contrary to the principles laid down by the Supreme Court in conduct of examination could only have been taken after an opportunity had been given to the petitioners. The other averments have also been denied.

. Pursuant to directions of this Court an additional affidavit was filed on 31st July, 2006. It is pointed out that the examination forms provided for preference to be given to a candidate in the same terms as provided for in the conditions in the approved Brochure. A candidate had to give a preference to the college of his choice and as regards the second preference as per condition No.9.10 of the brochure a candidate was entitled to choose any college of his choice in the State of Maharashtra. In terms of the

brochure, as approved, 70% seats are to be filed from the candidates from the respective University Region, 28% from candidates outside the University Region, and 2% from outside the State. The admission had be done through a Single Window system strictly on merit. It is pointed out that CET forms were required to be submitted by the students by 12th June, 2006 and as per the initial approved examination programme the written examination was to be held on 25th June, 2006. It was thereafter scheduled on 2nd July, 2006 as approved by the second Respondent. In the intervening period i.e. between the last date for submission of the examination form and the written examination the second Respondent by its letter dated 23rd June, 2006 asked the petitioners to follow a single window procedure for making the admissions. In view of that, the petitioners were required to call on the candidates to give three preferences of colleges. The CET, it is set out, has been conducted by the petitioners Association for the last two academic years, following the same procedure as approved by the second

Respondent which is also the same for the current academic year. The brochures were approved by the second Respondent for two consecutive years and there has been no complaints. No students have made any complaints or at least the decision of the committee does not show that. The Respondent No.2 has acted on dubious and baseless complaints of the political student organizations.

9. Chamber Summons No.214 of 2006 has been taken out by Akhil Bhartiya Vidyarthi Parishad to intervene. We have heard them. In the Affidavit supporting the Chamber Summons, it is set out, that they have received complaints of various students' representatives throughout the State of Maharashtra in regard to the method and manner of admissions to B.Ed colleges located in the State. As such, the complaints were made to the committee which had taken note of the same. The interveners seeks to repeat some of the complaints of financial misappropriation as set out in the affidavit of Respondent No.2. After verifying those complaints an application was made to

Respondent No.2 on 22nd June, 2006. It is pointed out that information brochures were issued to the students only after they had conducted an agitation, on payment of Rs.250/-. Even in the written examinations, it is set out that several malpractices were carried out. There are some other averments.

10. The petitioners could not file their reply to this affidavit as it was filed on the concluding day of the hearing, but, have denied the contents therein.

11. The questions that arise for our consideration are (1) Whether after having approved the brochure for the CET-2006-2007 conducted by the petitioners, was it open to the Samiti to direct Respondent No.1 to admit students by excluding the marks of the oral interview and to consider the marks for the theory papers ?; and (2) Whether the Respondent No.2 could have cancelled the marks allotted for the oral test based on purported complaints which were before

the holding of the examination and if so, whether that could have been done without giving an opportunity to the petitioners to show cause ?

12. We may also note that the petitioner is the body which has been conducting the examinations and whose members are to admit the students. Over 17000 students had appeared for the examination. They proceeded to appear for the examination with the legitimate expectations, that the overall merit would be in terms of the brochure approved by Respondent No.2. Was it, therefore, open to Respondent No.2 after having approved the brochure, which was similar to the approval granted for the CET exams of 2004-2005, 2005-2006, merely because some complaints were filed and on which complaints Respondent No.2 did not act upon till the examinations were conducted, to have directed the petitioners to rely only on the results of the marks of the written test only. The petitioners have produced before us a list of 15299 students in the order of merit. That shows how the marks had to be allotted. For academic

examinations passed by the candidates 40 marks were reserved; for the CET the marks reserved were : theory 40 + oral 20 = 60 marks. Considering the power conferred on Respondent No.2 in the matter of conduct of exams and the admission procedure, it was always open to Respondent No.2 to direct the manner in which the marks were to be allotted for admissions in order to ensure admissions of meritorious candidates. This however could have been done before the brochure was approved at any rate before the examination had been held. It is in this background that we shall examine the issue.

. Needless to say that the judgments in Islamic Academy (Supra) and P.A.Inamdar (Supra) would confer a power on Respondent No.2 to have a control on the conduct of examinations and admission procedure. The conduct of examination would include a marking system, based on which the merit list would be drawn up. In other words, it is not as if the Respondent No.2 would be without jurisdiction, if before the brochure was finalised

they had called on the petitioners to admit students based on only written examination which was conducted. We, however, find in brochure issued for the CET 2004-2005 in Clause-7 marks were to be allotted in a similar manner as per the brochure of this year. Similar was the position for the brochure for CET 2005-2006. In other words, Respondent No.2 itself had not found that procedure of allotting marks to be irrelevant or that would result in less meritorious candidates being admitted. to the B.Ed course. For the academic year 2006-2007 the Respondent No.2 had approved the same allotment. As noted by us earlier, once a brochure is issued and students are informed that their merit would be based on the criteria set out in the brochure, it would not be open to Respondent No.2 at least after the examinations were conducted to change the norms for admission. We are clearly, therefore, of the opinion that though it is permissible for Respondent No.2 to decide the criteria for admission, once Respondent No.2 had approved the criteria and based upon which the students had

appeared and in the instant case over 17000 students, the Respondent No.2 could not have changed that criteria. Such change would be without authority of law. We are clearly therefore of the opinion that communication whereby the petitioners had been informed that the admission would only be based on marks obtained for the theory papers only would be considered for merit rank, was clearly without jurisdiction and to that extent the communication of 13th July, 2006 is clearly illegal. The petitioners are entitled to fill in the seats based on the marks obtained in terms of the brochure for CET 2006-2007.

13. We now come to the second contention as to whether the results of the examination could have been cancelled without giving an opportunity to the petitioners. The petitioners have conducted the examination at several centres all over the Maharashtra. The complaints from the student organizations, relied upon by the Respondent No.2, were the letter dated 22nd June, 2006 by Akhil

Bhartiya Vidyarthee Parishad, Maharashtra; and letter dated 21st June, 2006 by Chhaya-Marathi Yuva Sanghatan. These letters were before the examination was conducted on 2nd July, 2006. The main objection of those student organisations was that the marks for the oral test should not be considered. The marks for the oral test had been approved by the Respondent No.2 itself and that too consecutively for the last three academic years including this academic year. The said student organizations took no steps in the academic years 2004-2005 and 2005-2006 and apart from mere protest, did not approach this Court to ventilate their grievances against the oral examination. Nor did Respondent No.2 find the complaints as genuine as the exams were allowed to be conducted in terms of the brochure. There is nothing on record to show that there was any malpractice in the conduct of the examination to warrant interference by the Respondent No.2. When thousands of students had appeared for an examination, their merit cannot be adjudicated in a manner different from which they were informed

at the time when they filled-in forms and appeared for examination. It was incumbent on the Respondent No.1 in these circumstances to have given an opportunity to the petitioners at least if not the students aggrieved, to show cause against the proposed departure from the approved procedure as set out in the brochure. This is not a case where the Respondent No.2 took into consideration large scale illegalities in the conduct of the examinations or for that matter the petitioners playing fraud on the Respondent No.2 by misleading it on material points. The petitioners in a like manner of 2004-2005 and 2005-2006 criteria which had been approved by the Respondent No.2, had submitted the similar criteria for the academic year 2006-2007. In our opinion, therefore, the action of Respondent No.2 was in violation of the principles of natural justice and fair play and consequently also on that count the decision taken in the meeting held on 12th July, 2006 to exclude oral marks and or change the criteria for admission as set out in the brochure of 2006-2007 was illegal, null and

void.

14. In these circumstances, we are of the opinion that the Petition should be allowed and in the light of that Rule is made absolute in terms of prayer clause (a) excluding para (h) of the letter dated 13.7.2006.

. We further make it clear that if any individual student has any grievance in the matter of the conduct of the exams or in the admission procedure by the Association including the college, considering the judgment of the Apex Court in Islamic Academy (Supra) and P.A.Inamdar (Supra), it will be open to them to file appropriate complaint before the Committee and it would be within the jurisdiction of the committee to entertain and take action in terms of the complaints. Having said so the petitioners can proceed to commence and complete the admission process.

[F.I.REBELLO,J.]

[SMT.V.K.TAHILRAMANI,J.]